

House Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 145

# **HOUSE BILL 2155**

AN ACT

AMENDING SECTIONS 9-462.01 AND 11-821.03, ARIZONA REVISED STATUTES; REPEALING LAWS 2005, CHAPTER 273, SECTION 4; RELATING TO TRANSFERS OF DEVELOPMENT RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-462.01, Arizona Revised Statutes, is amended to  
3 read:

4 9-462.01. Zoning regulations; public hearing; definitions

5 A. Pursuant to ~~the provisions of~~ this article, the legislative body of  
6 any municipality by ordinance may in order to conserve and promote the public  
7 health, safety and general welfare:

8 1. Regulate the use of buildings, structures and land as between  
9 agriculture, residence, industry, business and other purposes.

10 2. Regulate signs and billboards.

11 3. Regulate THE location, height, bulk, number of stories and size of  
12 buildings and structures, the size and use of lots, yards, courts and other  
13 open spaces, the percentage of a lot which may be occupied by a building or  
14 structure, access to incident solar energy and the intensity of land use.

15 4. Establish requirements for off-street parking and loading.

16 5. Establish and maintain building setback lines.

17 6. Create civic districts around civic centers, public parks, public  
18 buildings or public grounds and establish regulations therefor.

19 7. Require as a condition of rezoning public dedication of  
20 rights-of-way as streets, alleys, public ways, drainage and public utilities  
21 as are reasonably required by or related to the effect of the rezoning.

22 8. Establish floodplain zoning districts and regulations to protect  
23 life and property from the hazards of periodic inundation. Regulations may  
24 include variable lot sizes, special grading or drainage requirements, or  
25 other requirements deemed necessary for the public health, safety or general  
26 welfare.

27 9. Establish special zoning districts or regulations for certain lands  
28 characterized by adverse topography, adverse soils, subsidence of the earth,  
29 high water table, lack of water or other natural or man-made hazards to life  
30 or property. Regulations may include variable lot sizes, special grading or  
31 drainage requirements, or other requirements deemed necessary for the public  
32 health, safety or general welfare.

33 10. Establish districts of historical significance provided that:

34 (a) The ordinances may require that special permission be obtained for  
35 any development within the district if the legislative body has adopted a  
36 plan for the preservation of districts of historical significance which meets  
37 the requirements of subdivision (b) of this paragraph, and the criteria  
38 contained in the ordinance are consistent with the objectives set forth in  
39 the plan.

40 (b) A plan for the preservation of districts of historical  
41 significance shall identify districts of special historical significance,  
42 state the objectives to be sought concerning the development or preservation  
43 of sites, area and structures within the district, and formulate a program  
44 for public action including the provision of public facilities and the  
45 regulation of private development and demolition necessary to realize these  
46 objectives.

1 (c) The ordinance establishing districts of historical significance  
2 shall set forth standards necessary to preserve the historical character of  
3 the area so designated.

4 (d) The ordinances may designate or authorize any committee,  
5 commission, department or person to designate structures or sites of special  
6 historical significance in accordance with criteria contained in the  
7 ordinance, and no designation shall be made except after a public hearing  
8 upon notice of the owners of record of the property so designated. The  
9 ordinances may require that special permission be obtained for any  
10 development respecting the structures or sites.

11 11. Establish age specific community zoning districts in which  
12 residency is restricted to a head of a household or spouse who must be of a  
13 specific age or older and in which minors are prohibited from living in the  
14 home. Age specific community zoning districts shall not be overlaid  
15 OVERLAID over property without the permission of all owners of property  
16 included as part of the district unless all of the property in the district  
17 has been developed, advertised and sold or rented under specific age  
18 restrictions. The establishment of age specific community zoning districts  
19 is subject to all of the public notice requirements and other procedures  
20 prescribed by this article.

21 12. Establish procedures, methods and standards for the transfer of  
22 development rights within its jurisdiction. Any proposed transfer of  
23 development rights from the sending property or to the receiving property  
24 shall be subject to the notice and hearing requirements of section 9-462.04  
25 and shall be subject to the approval and consent of the property owners of  
26 both the sending and receiving property. ~~Prior to~~ BEFORE any transfer of  
27 development rights, a municipality shall adopt an ordinance providing for:

28 (a) The issuance and recordation of the instruments necessary to sever  
29 development rights from the sending property and to affix development rights  
30 to the receiving property. These instruments shall be executed by the  
31 affected property owners and lienholders.

32 (b) The preservation of the character of the sending property and  
33 assurance that the prohibitions against the use and development of the  
34 sending property shall bind the landowner and every successor in interest to  
35 the landowner.

36 (c) The severance of transferable development rights from the sending  
37 property and the delayed transfer of development rights to a receiving  
38 property.

39 (d) The purchase, sale, exchange or other conveyance of transferable  
40 development rights prior to the rights being affixed to a receiving property.

41 (e) A system for monitoring the severance, ownership, assignment and  
42 transfer of transferable development rights.

43 (f) The right of a municipality to purchase development rights and to  
44 hold them for resale.

45 (g) THE RIGHT OF A MUNICIPALITY AT ITS DISCRETION TO ENTER INTO AN  
46 INTERGOVERNMENTAL AGREEMENT WITH ANOTHER MUNICIPALITY OR A COUNTY FOR THE

1 TRANSFER OF DEVELOPMENT RIGHTS BETWEEN JURISDICTIONS. THE TRANSFER SHALL  
2 COMPLY WITH THIS PARAGRAPH, EXCEPT THAT IF THE SENDING PROPERTY IS LOCATED IN  
3 AN UNINCORPORATED AREA OF A COUNTY, THE APPROVAL OF THE DEVELOPMENT RIGHTS TO  
4 BE SENT TO A MUNICIPALITY SHALL COMPLY WITH SECTION 11-821.03.

5 B. For the purposes prescribed in subsection A of this section, the  
6 legislative body may divide a municipality, or portion of a municipality,  
7 into zones of the number, shape and area it deems best suited to carry out  
8 the purpose of this article and articles 6, 6.2 and 6.3 of this chapter.

9 C. All zoning regulations shall be uniform for each class or kind of  
10 building or use of land throughout each zone, but the regulations in one type  
11 of zone may differ from those in other types of zones as follows:

12 1. Within individual zones, there may be uses permitted on a  
13 conditional basis under which additional requirements must be met, including  
14 requiring site plan review and approval by the planning agency. The  
15 conditional uses are generally characterized by any of the following:

16 (a) Infrequency of use.

17 (b) High degree of traffic generation.

18 (c) Requirement of large land area.

19 2. Within residential zones, the regulations may permit modifications  
20 to minimum yard lot area and height requirements.

21 D. To carry out the purposes of this article and articles 6 and 6.2 of  
22 this chapter, the legislative body may adopt overlay zoning districts and  
23 regulations applicable to particular buildings, structures and land within  
24 individual zones. For the purposes of this subsection, "overlay zoning  
25 district" means a special zoning district that includes regulations which  
26 modify regulations in another zoning district with which the overlay zoning  
27 district is combined. Overlay zoning districts and regulations shall be  
28 adopted pursuant to section 9-462.04.

29 E. The legislative body may approve a change of zone conditioned upon  
30 a schedule for development of the specific use or uses for which rezoning is  
31 requested. If at the expiration of this period the property has not been  
32 improved for the use for which it was conditionally approved, the legislative  
33 body, after notification by certified mail to the owner and applicant who  
34 requested the rezoning, shall schedule a public hearing to take  
35 administrative action to extend, remove or determine compliance with the  
36 schedule for development or take legislative action to cause the property to  
37 revert to its former zoning classification.

38 F. All zoning and rezoning ordinances or regulations adopted under  
39 this article shall be consistent with and conform to the adopted general plan  
40 of the municipality, if any, as adopted under article 6 of this chapter. In  
41 the case of uncertainty in construing or applying the conformity of any part  
42 of a proposed rezoning ordinance to the adopted general plan of the  
43 municipality, the ordinance shall be construed in a manner that will further  
44 the implementation of, and not be contrary to, the goals, policies and  
45 applicable elements of the general plan. A rezoning ordinance conforms with  
46 the land use element of the general plan if it proposes land uses, densities

1 or intensities within the range of identified uses, densities and intensities  
2 of the land use element of the general plan.

3 G. No regulation or ordinance under this section may prevent or  
4 restrict agricultural composting on farmland that is five or more contiguous  
5 acres and that meets the requirements of this subsection. An agricultural  
6 composting operation shall notify in writing the legislative body of the city  
7 or town and the nearest fire department of the location of the composting  
8 operation. If the nearest fire department is located in a different city or  
9 town from the agricultural composting operation, the agricultural composting  
10 operation shall also notify in writing the fire department of the city or  
11 town in which the operation is located. Agricultural composting is subject  
12 to ~~the provisions of~~ sections 3-112 and 49-141. Agricultural composting may  
13 not be conducted within one thousand three hundred twenty feet of an existing  
14 residential use, unless the operations are conducted on farmland or land  
15 leased in association with farmland. Any disposal of manure shall comply  
16 with section 49-247. For THE purposes of this subsection:

17 1. "Agricultural composting" means the controlled biological  
18 decomposition of organic solid waste under in-vessel anaerobic or aerobic  
19 conditions where all or part of the materials are generated on the farmland  
20 or will be used on the farmland associated with the agricultural composting  
21 operation.

22 2. "Farmland" has the same meaning prescribed in section 3-111 and is  
23 subject to regulation under section 49-247.

24 H. For THE purposes of this section:

25 1. "Development rights" means the maximum development that would be  
26 allowed on the sending property under any general or specific plan and local  
27 zoning ordinance of a municipality in effect on the date the municipality  
28 adopts an ordinance pursuant to subsection A, paragraph 12 of this section  
29 respecting the permissible use, area, bulk or height of improvements made to  
30 the lot or parcel. Development rights may be calculated and allocated in  
31 accordance with factors including dwelling units, area, floor area, floor  
32 area ratio, height limitations, traffic generation or any other criteria that  
33 will quantify a value for the development rights in a manner that will carry  
34 out the objectives of this section.

35 2. "Receiving property" means a lot or parcel within which development  
36 rights are increased pursuant to a transfer of development rights. Receiving  
37 property shall be appropriate and suitable for development and shall be  
38 sufficient to accommodate the transferable development rights of the sending  
39 property without substantial adverse environmental, economic or social impact  
40 to the receiving property or to neighboring property.

41 3. "Sending property" means a lot or parcel with special  
42 characteristics, including farmland, woodland, desert land, mountain land,  
43 floodplain, natural habitats, recreation or parkland, including golf course  
44 area, or land that has unique aesthetic, architectural or historic value that  
45 a municipality desires to protect from future development.

1           4. "Transfer of development rights" means the process by which  
2 development rights from a sending property are affixed to one or more  
3 receiving properties.

4           Sec. 2. Section 11-821.03, Arizona Revised Statutes, is amended to  
5 read:

6           11-821.03. Transfer of development rights; definitions

7           A. The board of supervisors may establish procedures, methods and  
8 standards for the transfer of development rights within its jurisdiction.  
9 Any proposed transfer of all or any portion of the development rights of a  
10 sending property to a receiving property is subject to the written approval  
11 and consent of the property owners of both the sending property and the  
12 receiving property. A county may not condition a change of zone on a  
13 property owner's consent to or other participation in a proposed transfer of  
14 development rights, except that a change of zone may be required to implement  
15 a development agreement if it is voluntarily entered into by a property owner  
16 or owners with a county for the transfer of development rights concurrently  
17 with the county's approval of the change of zone. Before any transfer of  
18 development rights, a county shall adopt an ordinance providing for:

19           1. The establishment, execution and recordation of instruments to  
20 sever development rights transferred from the sending property and to affix  
21 ~~such~~ THE development rights to the receiving property. The instruments shall  
22 be executed by the property owners of the sending and receiving property and  
23 any lienholders.

24           2. The preservation of the characteristics of the sending property  
25 lending to the transfer of development rights and assurance that any of the  
26 prohibitions against particular uses or development of the sending property  
27 determined to be necessary to preserve ~~such~~ THE characteristics shall bind  
28 the property owner and every successor in interest to ~~such~~ THE property.

29           3. A delay ~~prior to~~ BEFORE transfer of development rights to a  
30 receiving property after the severance of transferable development rights  
31 from a sending property.

32           4. The purchase, sale, exchange or other conveyance of transferable  
33 development rights before the rights are affixed to a receiving property.

34           5. Procedures for monitoring the severance, ownership and transfer of  
35 transferable development rights.

36           6. Appropriate public participation procedures for each type of  
37 transaction.

38           7. Use of development agreements as an option for implementation.

39           B. The resulting density or intensity of land use of the receiving  
40 property shall conform to the adopted comprehensive plan, as amended, if  
41 applicable. If a plan amendment is required prior to the transfer, it shall  
42 not be considered a major plan amendment.

43           C. THE BOARD OF SUPERVISORS MAY AUTHORIZE THE TRANSFER OF DEVELOPMENT  
44 RIGHTS FROM UNINCORPORATED AREAS OF A COUNTY TO A MUNICIPALITY PURSUANT TO AN  
45 INTERGOVERNMENTAL AGREEMENT.

1           ~~C.~~ D. For the purposes of this section:

2           1. "Ancillary military facility" has the same meaning prescribed in  
3 section 28-8461.

4           2. "Development rights" means the maximum development that would be  
5 allowed on the sending property under the adopted comprehensive plan, the  
6 specific plan, if any, or the zoning ordinance, whichever provides greater  
7 density or intensity of use or, if applicable, both, in effect on the date  
8 the county adopts an ordinance pursuant to subsection A OF THIS SECTION,  
9 respecting the permissible use, area, bulk or height of improvements made to  
10 one or more lots or parcels. Development rights may be calculated and  
11 allocated in accordance with factors including dwelling units, area, floor  
12 area, floor area ratio, height limitations, traffic generation or any other  
13 criteria that will quantify a value for the development rights in a manner  
14 that will carry out the objectives of this section.

15           3. "High noise or accident potential zone" has the same meaning as  
16 prescribed in section 28-8461.

17           4. "Military airport" has the same meaning as prescribed in section  
18 28-8461.

19           5. "Receiving property" means one or more lots or parcels within which  
20 development rights are increased under the adopted comprehensive plan, the  
21 specific plan, if any, or the zoning ordinance, whichever provides greater  
22 density or intensity of use or, if applicable, both, in effect ~~prior to~~  
23 BEFORE a transfer of development rights and an amendment to the adopted  
24 comprehensive plan, specific plan or zoning ordinance, or a rezone of the  
25 property, whichever is required to implement the increase in development  
26 rights. The receiving property shall be suitable for development that  
27 includes the transferred development rights consistent with the adopted  
28 comprehensive plan, as amended, if applicable. Receiving property does not  
29 include lots or parcels that are partially or wholly located within, or that  
30 include, a high noise or accident potential zone of a military airport or an  
31 ancillary military facility.

32           6. "Sending property" means one or more lots or parcels that are  
33 partially or wholly located within, or that include, a high noise or accident  
34 potential zone of a military airport or an ancillary military facility, a  
35 floodplain, natural habitat, geologic features, recreation area or parkland,  
36 or land that has unique aesthetic, architectural or historic value, that a  
37 county determines is appropriate and necessary to restrict against particular  
38 uses or future development that would impair or preclude preservation of the  
39 characteristic or characteristics of the property or to protect the public  
40 because of health or safety concerns.

41           7. "Transfer of development rights" means the process by which  
42 development rights from one or more sending properties are affixed to one or  
43 more receiving properties.

44           Sec. 3. Repeal

45           Laws 2005, chapter 273, section 4 is repealed.

APPROVED BY THE GOVERNOR MAY 1, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2008.